Supreme Court, U.S.
FILED

96 500 JUL 9 1996

OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1996

Robert C. Wilson, *Petitioner*

v

Micheal Began, Ocean Orthopedic, *Respondant(s)*

On Petition For Writ Of Certiorari
To The 2nd Appellate District Division 6, State of California

---

APPENDIX

Robert C. Wilson
P.O. Box 9
Summerland, CA 93067
(805)289-9689
Petitioner in Propria Persona

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93 pp

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Patterson, Ritner, Lockwood,
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260 Maple Court, Suite 231
Ventura, California 93003-3594
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FILED
AUG 16 1994
s/ Sheila Gonzalez, Superior and
Municipal Courts Executive
Officer and Clerk

Samuel M. Huestis, Esq. (Bar No. 113557)
Attorneys for Defendants
Micheal D. Began, M.D. and Ocean Orthopedic Surgery and
Sports Medical Group

IN THE SUPERIOR COURT OF THE

STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF VENTURA

ROBERT WILSON, JR.	) Case #CIV 136084
	)
Plaintiff,	)
	) **JUDGMENT**
	)
vs.	)
	)
MICHAEL D.BEGAN, M.D.,	)
OCEAN ORTHOPEDIC	)
SURGERY AND SPORTS	)
MEDICAL GROUP and Does	)
1 through 20, Inclusive,	)
Defendants,	)

The motion of defendants Michael D. Began, M.D., and Ocean Orthopedic Surgery and Sports Medical Group for summary judgment or, in the alternative, summary adjudication of issues

having come on for hearing on August 12, 1994, plaintiff Robert Wilson, Jr., appearing in pro per and the defendants appearing through counsel, Patterson, Ritner, Lockwood, Zanghi &Gartner by Samuel M. Huestis, and the court having read and considered the moving and opposing papers and argument and having granted the motion for summary judgment,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff Robert Wilson Jr., take nothing by his complaint and that defendants Michael D. Began, M.D., and Ocean Orthopedic Surgery and Sports Medical Group recover from plaintiff Robert Wilson, Jr., costs of suit to be endorsed on this judgment pursuant to law

DATED: AUG 15 1994

S/ JOHN J. HUNTER
THE HONORABLE JOHN J.HUNTER
Judge of the Superior Court

NOT TO BE PUBLISHED

In The Court Of Appeal Of The State Of California

Second Appellate District

Division 6

ROBERT WILSON, JR.,	)	**2d Civil No. B087557**
	)	**(Super. Ct. No. 136084)**
Plaintiff and Appellant,	)	**(Ventura County)**
	)	
v.	)	
	)	
MICHAEL D. BEGAN et al.,	)	
	)	
Defendants and Respondents.	)	

Plaintiff Robert Wilson, Jr. Appeals a summary judgment in favor of defendants Michael D.Began, M.D.and Ocean Orthopedic Surgery and Sports Medical Group. We affirm and conclude the statute of limitations bars Wilson' s action. (Code Civ. Proc., 340, subd. (3), 340.5.) 1

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1 All statutory references are to the Code of Civil Procedure

FACTS

On September 3, 1993, plaintiff Robert Wilson, Jr. brought this action for negligence and breach of professional duty against defendants Michael D.Began, M.D.and Ocean Orthopedic Surgery and Sports Medical Group. 2 Wilson alleged that he visited Doctor Began on December 30, 1991, for diagnosis and treatment of carpal tunnel syndrome in his wrists. Without his knowledge or consent, Doctor Began allegedly disclosed confidential information to Wilson' s employer.

Began answered Wilson' s complaint and on June 9, 1994, moved for summary judgment, contending, in part, that the one-year limitations period of sections 340 and 340.5 precluded Wilson' s action. The depositions and declarations established this:

Wilson was a civilian employee of the United States Navy. His job duties required using a computer. In 1991, Wilson suffered bilateral wrist pain symptomatic of carpal tunnel syndrome. In September 1991, Wilson filed a worker' s compensation claim with his employer.

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2 To ease the reader's task, we refer to the defendants jointly as "Began", except where clarity demands we draw a distinction.

On December 30, 1991, Wilson' s personal physician referred him to Doctor Began, an orthopedic surgeon. Doctor Began examined Wilson and performed neurological tests. Thereafter, he drafted a two-page letter to the Department of Labor, Worker' s Compensation Claims Office.

In the letter, Doctor Began opined that Wilson suffered from mild left carpal tunnel syndrome but "has overreacted to his symptoms as evidenced by his rigidly held hand and wrist posture." Began reported that Wilson informed him that he tried to keep his hands in an "atomiton" positions at all times to relieve pain. Began wrote that Wilson "may benefit from psychiatric consultation."

In January and February 1992, Wilson suspected and then learned that his employer and the Department of Labor knew of his visit to Doctor Began. On January 6, 1992, he learned that a Navy worker' s compensation claims administrator knew that he had visited Began. A week later, Wilson' s supervisor alluded to Wilson' s "new doctor" and recommended that Wilson receive psychological counseling. Wilson admitted he was concerned "what Dr. Began would say about [him]" to others. Wilson also noticed that his supervisor displayed a "different" attitude toward him. On February 19, 1992, Wilson obtained a copy of Began' s letter from his personal physician. He then noticed that Began had addressed the letter to the Department of Labor, Worker' s Compensation Claims Office.

An employee in Doctor Began' s office admitted that a Navy worker' s compensation claims administrator telephoned the office in January 1992 and informed the employee that Wilson had a work-related

injury. The Navy administrator provided the employee with a claim number and other information concerning the claim. The administrator had obtained the name and telephone number of Began from Wilson' s personal physician.

In his opposition to summary judgment, Wilson admitted the following undisputed facts: On January 6, 1992, he knew that a Navy claims administrator had spoken with an employee in Doctor Began' s office. On January 14, 1992, he suspected his supervisor knew of or had read Doctor Began' s letter because his supervisor recommended counseling. On February 19, 1992, Wilson obtained a copy of the letter and saw its addressee.

Nevertheless, Wilson did not file this action until approximately 18 months later.

The trial court granted Wilson a one-month continuance of the summary judgment hearing so that he could pursue additional discovery. Thereafter, the trial court denied Wilson further continuances. After a hearing at which Wilson appeared, the trial court granted Began' s motion for summary judgment.

Wilson appeals and contends: 1) the trial court improperly granted summary judgment; 2) the trial court improperly denied him further continuances of the summary judgment hearing; and 3) the trial judge displayed partiality and favoritism toward defendants.

DISCUSSION

I.

Wilson argues that the trial court improperly granted summary judgment.

In reviewing a summary judgment, we must independently examine the evidence to discern whether triable issues of fact exist. (*Szadolci v. Hollywood Park Operating Co.* (1993) 14 Cal. App.4th 16,19.) In this independent review, the appellate court performs the same analysis required of the trial court. (*Planned Parenthood v.City of Santa Maria* (1993) 16 Cal App. 4th 685, 690.) This analysis identifies the issues presented by the pleadings, determines whether the moving party has presented evidence negating the opposing party' s claim or defense, and decides whether the opposing party demonstrates the existence of a triable factual issue. (Ibid.) We must resolve any doubts concerning the existence of a triable factual issue in favor of the opposing party. (*Szadolci v. Hollywood Park Operating Co. , supra*, 14 Cal.App.4th at p.19.)

Section 340, subdivision (3), provides a one-year statute of limitations for injury "caused by the wrongful act or neglect of another." Similarly, section 340.5 provides a statute of limitations for medical negligence of "one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered" his injury. Thus, the limitations period under section 340.5 begins to run when plaintiff "suspects or should suspect that [his] injury was caused by wrongdoing."

(*Jolly v Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1110.) Section 340.5 involves negligence "in the rendering of professional services...within the scope of services for which the provider is licensed." (340.5, subd.(2).)

Under either limitations period, Wilson' s action is barred. By his admissions in his deposition and by his concessions regarding undisputed facts, Wilson established that by January 6, 1992, he knew a Navy claims administrator had spoken to an employee in Doctor Began's office. A week later, he suspected his supervisor knew Began had recommended psychological counseling. On February 19, 1992, Wilson obtained a copy of Doctor Began' s letter and saw it was addressed to the Department of Labor. The limitations period commenced in early 1992 when Wilson suspected Began of wrongdoing. His action, filed 18 months later, was too late. (437c, subd. (n) (2) [summary judgment proper if complete defense exists].)

Wilson contended that Began misrepresented or concealed the existence of his letter. Assuming this to be true, the statute of limitations nevertheless commenced on February 19, 1992, when Wilson obtained a copy of the letter. (Young v Haines (1986) 41 Cal.3d 883,901 [concealment by defendant will not toll one-year limitations period if discovery has occurred.

Wilson also claims the trial judge improperly denied him a second and a third continuance of the summary judgment hearing. He requested these continuances to further depose the Navy claims administrator concerning, in part, "how she identified herself to defendants."

The trial court did not abuse its discretion in denying Wilson these further continuances. Section 437c, subdivision (h), requires a party to establish that "facts essential to justify opposition may exist" to obtain a continuance. Wilson failed to show how the deposition of the Navy administrator would bear on his discovery of the Began letter. (Roth v Rhodes (1994) 25 Cal.App.4th 530, 548 [party seeking continuance must establish that facts to be discovered would justify opposition].)

III.

Wilson asserts the trial judge displayed partiality and favoritism by these statements: "I can't figure out the case at all..." "But it looks to me, Mr. Wilson, that what you were attempting to do is work a Workman' s Comp.fraud...and you got caught." "[Y] our attempted fraud didn't work." Wilson protests the trial judge' s assumption that he intended to concealed Doctor Began' s diagnosis of minimal carpal tunnel syndrome from the Navy or the Department of Labor.

The trial judge' s remarks were unnecessary. In reviewing a summary judgment, however, the appellate court performs an independent review of the evidence to determine the existence of triable factual issues. (*Planned Parenthood v City of Santa Maria, supra,* 16 Cal.App.4th at p.690.)

We have disregarded the trial judges remarks in performing this review. As stated, ante., summary judgment was proper.

Accordingly, the judgment is affirmed. Wilson shall bear costs on appeal.

NOT TO BE PUBLISHED.

s/ Gilbert, J.

We concur:

Stone, P. J.

Yegan, J.

OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
JOSEPH A. LANE, CLERK

DIVISION: 6

JAN 30 1996

B087557

Robert C Wilson
P O Box 9
Summerland, CA 93067

RE: Wilson, Robert
VS.
Began, Michael D

2 Civil B087557
Ventura No. 136084

THE COURT:

Petition for rehearing denied

Second Appellate District, Division Six, No. BO87557
SO51918

In The Supreme Court Of California

Robert Wilson Jr., Appellant

V

Michael D.Began, Et.Al, Respondents

Supreme Court
FILED
April 10, 1996
Robert Wandruff, Clerk
Deputy

Appellant's Petition for Review DENIED

s/ LUCAS
Chief Justice

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Ventura County
Superior and Municipal Courts
FILED
Jun 21 1994

Samuel M. Huestis, Esq. (Bar No. 113557)
Attorneys for Defendants
Micheal D. Began, M.D. and Ocean Orthopedic Surgery and
Sports Medical Group

IN THE SUPERIOR COURT OF THE

STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF VENTURA

ROBERT WILSON, JR.	) **Case #CIV 136084**
	)
Plaintiff,	) **Order on Plaintiff's**
	) **Motion to Compel Further**
	) **Discovery Responses**
vs.	)
	) (Assigned to Judge Hunter,
MICHAEL D.BEGAN, M.D.,	) Courtroom 21)
OCEAN ORTHOPEDIC	)
SURGERY AND SPORTS	)
MEDICAL GROUP and Does	)
1 through 20, Inclusive,	)
Defendants,	)

The motion of plaintiff Robert Wilson, Jr., to compel further discovery responses of defendants Michael D. Began, M.D., and Ocean Orthopedic Surgery and Sports Medical Group, having come on regularly for hearing on June 16, 1994, **having been denied**

without prejudice on May 19, 1994, the plaintiff appearing in pro per and the responding defendants appearing through counsel, Patterson, Ritner, Lockwood, Zanghi & Gartner by Samuel M. Huestis, and the court having denied the motion and ordered the payment of sections,

IT IS HEREBY ORDERED that:

1.Plaintiff's motion to compel further discovery responses is denied.

2.Plaintiff shall pay to counsel for the responding parties sanctions in the amount of Three Hundred Sixty Dollars ($360.00) on or before July 16, 1994.

DATED: JUN 20 1994

s/John J.Hunter
Judge of the Superior Court

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Ventura County
Superior and Municipal Courts
FILED
JUL 05 1994

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Attorneys for Defendants
Micheal D. Began, M.D. and Ocean Orthopedic Surgery and
Sports Medical Group

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

ROBERT WILSON, JR.	) **Case #CIV 136084**
	)
Plaintiff,	) **Notice of Ruling on Ex**
	) **Parte Application for**
	) **Orders (1) Staying the**
	) **Taking of the Deposition**
vs.	) **of Joe Alig Pending Deter-**
MICHAEL D.BEGAN, M.D.,	) **mination of Motion for**
OCEAN ORTHOPEDIC	) **Protective Order and (2)**
SURGERY AND SPORTS	) **Modifying Order Entered**
MEDICAL GROUP and Does	) **June 28, 1994, Re Trial Date**
1 through 20, Inclusive,	)
Defendants,	)

To All Parties and Their Attorneys of Record Herein:

PLEASE TAKE NOTICE that the ex parte application of defendants Micheal D. Began, M.D., and Ocean Orthopedic Surgery and Sports Medical Group for orders (1) staying the taking of the deposition of Joe Alig in Guam pending the determination of the

defendants' motion for a protective order and (2) modifying the order entered June 28, 1994, regarding the trial date, came on regularly for hearing on July 1, 1994, Patterson, Ritner, Lock wood, Zanghi, & Gartner by Samuel M. Huestis appearing for the moving defendants, and plaintiff Robert Wilson, Jr.,appearing in pro per. Upon reading and considering the moving papers and argument of counsel and Mr. Wilson, the court made the following rulings:

1. Time was shortened to hear and rule on the relief sought forthwith.

2. The deposition of Joe Alig in Guam was stayed pending the hearing of the defendants' summary judgment motion on August 12, 1994.

3. The trial was advanced from September 12, 1994, to August 29, 1994, at 1:30p.m.in Courtroom 21.

DATED: July 1, 1994

Patterson, Ritner, Lockwood,
Zanghi & Gartner
S/Samuel M. Huestis
Attorneys for Defendants Michael D.
Began, M.D., and Ocean Orthopedic
Surgery and Sports Medical Group

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Ventura County
Superior and Municipal Courts
FILED
JUL 14 1994

Samuel M. Huestis, Esq. (Bar No. 113557)
Attorneys for Defendants
Micheal D. Began, M.D. and Ocean Orthopedic Surgery and
Sports Medical Group

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

ROBERT WILSON, JR.	) **Case #CIV 136084**
	)
Plaintiff,	) **Notice of Ruling on**
	) **Plaintiff's Ex Parte**
	) **Application**
vs.	)
	)
MICHAEL D.BEGAN, M.D.,	)
OCEAN ORTHOPEDIC	)
SURGERY AND SPORTS	)
MEDICAL GROUP and Does	)
1 through 20, Inclusive,	)
Defendants,	)

To All Parties and Their Attorneys of Record Herein:

PLEASE TAKE NOTICE that the ex parte application of Plaintiff Robert Wilson, Jr., for an order shortening time to serve notice of motion and motion to extend time limit on discovery came on for hearing before the Honorable John J. Hunter, judge presiding in

Courtroom 21, on July 12, 1994. Mr. Wilson appeared in pro per, and Patterson, Ritner, Lockwood, Zanghi & Gartner by Samuel M. Huestis appeared as counsel for defendants Michael D. Began, M.D., and Ocean Orthopedic Surgery
and Sports Medical Group.

Upon reading and considering the ex parte application and upon stipulation of counsel and Mr. Wilson, the court shortened time, heard the motion on its merits, and ruled as follows:

1. Discovery is extended for the purpose of allowing Mr. Wilson to take the deposition of nonparty witness Mary Wedel. Counsel and Mr. Wilson are to work out a date for the deposition.

2. The defendants will search their records and produce any insurance billing forms of the type described by Amparo Leon at her deposition.

3. Mr. Wilson's motion to extend discovery with respect to other matters, including the deposition of Amparo Leon and interrogatories, is denied.

DATED: July 12, 1994

Patterson, Ritner, Lockwood,
Zanghi & Gartner
S/Samuel M. Huestis
Attorneys for Defendants Michael D.
Began, M.D., and Ocean Orthopedic
Surgery and Sports Medical Group

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Ventura County
Superior and Municipal Courts
FILED
AUG -2 1994

Samuel M. Huestis, Esq. (Bar No. 113557)
Attorneys for Defendants
Micheal D. Began, M.D. and Ocean Orthopedic Surgery and
Sports Medical Group

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA

ROBERT WILSON, JR.) **Case #CIV 136084**
)
Plaintiff,) **Notice of Ruling**
)
)
vs.)
)
MICHAEL D.BEGAN, M.D.,)
OCEAN ORTHOPEDIC)
SURGERY AND SPORTS)
MEDICAL GROUP and Does)
1 through 20, Inclusive,)
Defendants,)

To All Parties and Their Attorneys of Record Herein:

PLEASE TAKE NOTICE that the motion of plaintiff Robert Wilson, Jr., to continue the hearing on defendants' motion For summary judgment now set for August 12, 1994, and the trial now set for August 29. 1994, came on for hearing pursuant to ex parte

order shortening time on August 1, 1994, before the Honorable John J. Hunter, judge presiding in Courtroom 21. Plaintiff appeared in pro per; defendants Michael D. Began, M.D., and Ocean Orthopedic Surgery and Sports Medical Group appeared through counsel, Patterson, Ritner, Lockwood, Zanghi & Gartner, by Samuel M.Huestis. The court ruled as follows:

1. The motion for continuance of the hearing on defendants' motion for summary judgment, now set for hearing on August 12, 1994, was denied.

2. The motion for continuance of the trial now set for August 29, 1994, was denied.

3. Plaintiff may have until August 10, 1994, to file deposition testimony of Mary Wedel or a declaration pertaining thereto in opposition to defendants' motion for summary judgment.

DATED: August 1, 1994

Patterson, Ritner, Lockwood,
Zanghi & Gartner
S/Samuel M. Huestis
Attorneys for Defendants Michael D.
Began, M.D., and Ocean Orthopedic
Surgery and Sports Medical Group

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Samuel M. Huestis, Esq. (Bar No. 113557)
Attorneys for Defendants
Micheal D. Began, M.D. and Ocean Orthopedic Surgery and
Sports Medical Group

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

ROBERT WILSON, JR.	) **Case #CIV 136084**
	)
Plaintiff,	) **Notice of Rulings**
	)
	)
vs.	)
	)
MICHAEL D.BEGAN, M.D.,	)
OCEAN ORTHOPEDIC	)
SURGERY AND SPORTS	)
MEDICAL GROUP and Does	)
1 through 20, Inclusive,	)
Defendants,	)

To All Parties and Their Attorneys of Record Herein:

PLEASE TAKE NOTICE that the ex parte application of Plaintiff Robert Wilson, Jr., for an order shortening time for the hearing of a Motion to continue the hearing of defendants' motion for summary judgment set for August 12, 1994, and the trial of this action set for

August 29, 1994, came on for hearing on August 11, 1994, before the Honorable John J. Hunter, judge presiding in Courtroom 21. Plaintiff appeared in pro per; defendants Michael D. Began, M.D., and Ocean Orthopedic Surgery and Sports Medical Group appeared through counsel, Patterson, Ritner, Lockwood, Zanghi & Gartner by Samuel M. Huestis. The court denied the ex parte application.
PLEASE TAKE FURTHER NOTICE that defendants' motion for summary judgment came on for hearing on August 12, 1994, before the Honorable John J. Hunter, judge presiding in Courtroom 21. Plaintiff appeared in pro per; defendants Michael D. Began, M.D., and Ocean Orthopedic Surgery and Sports Medical Group appeared through counsel, Patterson, Ritner, Lockwood, Zanghi & Gartner by Samuel M. Huestis.The court found that the statute of limitations began to run on January 14, 1992, when plaintiff knew or should have known that information had been communicated to his employer, and the court granted the motion for summary judgment.

DATED: August 12, 1994

Patterson, Ritner, Lockwood,
Zanghi & Gartner
S/Samuel M. Huestis
Attorneys for Defendants Michael D.
Began, M.D., and Ocean Orthopedic
Surgery and Sports Medical Group

DECLARATION OF ROBERT C. WILSON, JR.

I, Robert C. Wilson, Jr., declare:

1. I am the Plaintiff in Pro Per in the Ventura County Superior Court Case No. CIV136084, entitled Wilson v Began,M.D., et al. I have personal knowledge of the facts stated in this Declaration and if called upon will testify competently thereto.

2. Attached hereto as Exhibit A is a true and correct copy of the complaint filed in this action on September 3, 1993.

3. Attached hereto as Exhibit B is a true and correct copy of the answer filed by Dr. Began on November 30, 1993.

4. Attached hereto as Exhibit C is a true and correct copy of the answer filed by Ocean Orthopedic Surgery and Sports Medical Group on December 30, 1993.

5. Attached hereto as Exhibit D are true and correct copies of excerpts of my original deposition transcript. I was present for the entirety of the deposition and declared that the foregoing testimony was true and correct.

6. Attached hereto as Exhibit E are true and correct copies of deposition transcript of Amparo Leon. I was present for the entirety of the deposition and declared that the foregoing testimony was true and correct.

7. Attached hereto as Exhibit F are true and correct copies of deposition transcript of Dr. Michael Began. I was present for the entirety of the deposition and declared that the foregoing testimony was true and correct.

8. Attached hereto as Exhibit G are true and exact copies of documents from my workers' compensation claim file I

obtained from my employer and the U.S.Department of Labor.

9. **Dr. Began did not inform me** that he believed (1) he could not do anything for me orthopedically and (2) I could benefit from a psychiatric consultation during my office visit with him on December 30, 1991.

I declare under the penalty of perjury under the laws of the State of California, the foregoing is true and correct.

DATED: July 29, 1994

s/Robert C. Wilson, Jr.

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260 Maple Court, Suite 231
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(805) 644-1061 Fax (805) 656-1547

Samuel M. Huestis, Esq.(Bar No.113557)
Attorneys for Defendants Michael D. Began, M.D., and
Ocean Orthopedic Surgery and Sports Medical Group

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA**

Robert Wilson, Jr., Plaintiff	**Case No. CIV 136084**
vs.	Notice of Motion and Motion for Summary Judgment or, In The Alternative, Summary Adjudication; Memorandum Of Points and Authorities; Declarations of Samuel M. Huestis and Mary Wedel; Exhibits (Filed concurrently with Statement of Undisputed Material Facts)
Michael D. Began, M.D., Ocean Orthopedic Surgery And Sports Medical Group Does 1Through 20, Inclusive, Defendants	

Date: July 8, 1994 Time: 8:30 A.M.
Place: Courtroom 21 Trial: August 8, 1994

To Plaintiff Robert Wilson, Jr., in Pro Per:

Please Take Notice that on July 8, 1994, at 8:30 A.M. or as soon thereafter as counsel may be heard in Courtroom 21 of the above entitled court, locate in the Hall of Justice, County Government Center, 800 South Victoria Avenue, Ventura, California 93009, defendants Micheal D. Began, M.D., and Ocean Orthopedic Surgery and Sports Medical Group will and do hereby move for summary

judgment in their favor and against plaintiff Robert Wilson, Jr.

This motion is made pursuant to Code of Civil Procedure section 437c on the grounds that plaintiff's action against the moving defendants has no merit and presents no triable issue of material fact with respect thereto and that the moving defendants are entitled to summary judgment as a matter of law.

In the event summary judgment is denied, the moving defendants alternatively move for summary adjudication, pursuant to Code of Civil Procedure section 437c, subdivision (f), of the following issues:

ISSUE 1: Wilson's first cause of action for negligence is without merit because it is barred by the statute of limitations. (See Facts 1-22 in the separate Statement of Undisputed Material Facts.)

ISSUE 2: Wilson's second cause of action for breach of professional duty is without merit because it is barred by the statute of limitations. (See Facts 2-23 in the separate Statement of Undisputed Material Facts.)

ISSUE 3: Wilson's complaint is without merit because (1) he tendered the issue of whether he sustained a work-related carpal tunnel injury by filing a worker's compensation claim before he saw Dr. Began and (2) there is no physician-patient privilege applicable to a communication relevant to an issue so tendered. (See Facts 1, 2, 3, and 23 in the separate Statement of Undisputed Material Facts and Evid. Code, 996.)

This motion is based on this notice, plaintiff's complaint filed September 3, 1993, Dr. Began's answer filed November 30, 1993, Ocean Orthopedic Surgery and Sports Medical Group's answer filed December 30, 1993, the accompanying memorandum of points and authorities, declarations of Samuel M. Huestis and Mary Wedel, and exhibits to the declarations, including portions of the deposition of Robert Wilson, Jr., the separately filed Statement of Undisputed Material Facts, the records and files of the court herein, and on such further evidence and argument as may be presented prior to or at the hearing of the motion. S/Samuel Huestis

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA

COURTROOM 21 **HON. JOHN J. HUNTER, JUDGE**

ROBERT WILSON, JR.,	)	
	)	
Plaintiff,	)	**Ventura County**
	)	**No. 136084**
vs.	)	
	)	
MICHAEL D. BEGAN, M.D. et al.,	)	
	)	
Defendants,	)	
	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
of
August 12, 1994

APPEARANCES:

For the Plaintiff: *IN PRO PER*

For the Defendants: *PATTERSON, RITNER, LOCKWOOD ZANGHI & GARTNER*
BY: SAMUEL M. HUESTIS
Attorney at Law
260 Maple Court Suite 231
Ventura, CA 93003-3594

Reported by: *DAVID J.O'GRADY*, CSR 3416
Official Reporter
800 South Victoria
Ventura, CA 93009

Ventura, California; Friday, August 12,1994; 8:50 A.M.

THE COURT: Wilson versus Began.

MR. HUESTIS: Good morning, your Honor, Sam Huestis For defendants Mike Began, Ocean Orthopedic.

MR. WILSON: Good morning, your Honor, Robert Wilson plaintiff in pro per.

THE COURT: There's a motion for summary judgment. The first theory of the motion is that somehow the Defendant doctor has a duty to report, I assume the duty to report this information to the employer because it was a Workmans' Comp case.

MR. HUESTIS: Well, your Honor, there actually are three issues for adjudication. The first two are based on the Statute of Limitations.

THE COURT: Well, I want to take up the one I am Talking about.

MR. HUESTIS: Okay. That is the third issue.

THE COURT: Right

MR. Huestis: That's -- essentially that Mr. Wilson Alleges in his complaint that there is a breach of some Physician/patient relationship --

THE COURT: Right

MR HUESTIS: -- because of this alleged disclosure Of the report.

THE COURT: Right

DAVID J. O'GRADY, CSR 3146

Mr. HUESTIS: What we're trying to say there is is that when under the patient Litigant exception when a Patient brings a lawsuit or a claim of a particular physical Problem, that he waives the privilege as to the--as to his Medical records and so on with respect to that problem. So That the Navy had their right to get that report just as a Defendant physician would have the right to obtain the Plaintiff's records in a medical malpractice suit.

THE COURT: Well, there is no doubt they could have Got it. The problem is is that--well, the problem--the Problem is that--is this plaintiff went to this doctor who I don't think is the Workmans' Comp doctor, is he?

MR. WILSON: No.

THE COURT: He is a private physician. He was Referred from his private physician.

MR. HUESTIS: Your Honor, there was a great deal of Confusion as to whether the doctor was seeing the patient under his private insurance versus Workers' Comp. That went Back and forth and that's a disputed issue.

THE COURT: I think that's a triable issue of fact in This case because if it is the--the problem is, and I tend To agree with you that ultimately this information would Have been revealed in a Workmans' Comp case because they Have a right to discover it.

MR. HUESTIS: Yes.

THE COURT: So ultimately it would have been Discovered. So that is a question.

But it looks to me, Mr. Wilson, that what you

1 were attempting to do is work a Workmans' Comp fraud in this
2 Case--
3 MR. WILSON: Your Honor--
4 THE COURT:--and you got caught.
5 MR. WILSON: No, your Honor. I am--see, according
6 To the depositions of Joe Alig, he was informed by the--my
7 Employer informed the U.S.Department of Labor that I had
8 Gone to see Doctor Began, and then Tim Dolstrum the
9 Representative for the U.S.Department of Labor asserted
10 Back to him that Doctor Began was not authorized to see me.
11 Or that doctor--or that Doctor Began was not authorized to
12 Perform any type of treatment.
13 But what I asserted in my opposition papers was
14 That Tim Dolstrum, the same one that informed my employer
15 That--that--that Doctor Began--that I was not
16 Authorized to see Doctor Began was that he sent the
17 Authorization to Doctor Phelps--Doctor Foraste, in the
18 Information that I reviewed, was unaware that I went. Based
19 Upon the report the--the defendants are asserting that I
20 At one time see Doctor Foraste under a referral from Doctor
21 Began is untrue because according to Doctor Foraste's notes,
22 She did not--she did not refer me to Doctor Began.
23 THE COURT: Well, how did you get there?
24 MR. WILSON: I went to Doctor Began by--well, Joe
25 Alig at the time, you know, um, he recommended in December
26 That I should go see an orthopedist or neurologist.
27 THE COURT: Well, in your statement of facts you have
28 Admitted that; that you got a referral to Began.

MR. WILSON: I am sorry, your Honor?
Now what I also did, I noted in my opposition Papers that I requested a complete copy of my Workers' Compensation claim file.
THE COURT: You say it is an undisputed fact.
MR. WILSON: I'm sorry?
THE COURT: That says, number three, "Wilson was seen By Doctor Began upon referral from the office of Wilson' Primary care physician."
MR. WILSON: I'm sorry, your Honor. That is Disputed.
THE COURT: You've got it in your undisputed facts, Sir. So it is not undisputed--it is undisputed.
So what is apparent to me is that what happened Is that you went to Began, Began gave you a bum report, you Tried to hide it from the--from the employer and it didn't Work so your attempted--your attempted fraud didn't work.
MR. WILSON: Your Honor, what I did was--I did not Attempt to unlawfully disclose Doctor Began's report.
THE COURT: You were going to disclose it to your Workers' Comp carrier?
MR. WILSON: They didn't--I--when I asked for a Copy of my complete Workers' Compensation claim file from The U.S.Department of Labor Doctor Began's report was not In there. My employers had notified the U.S.Department of Labor that I had gone to see Doctor Began and they said, " We Don't care. He is not authorized to see Doctor Began."
THE COURT: Okay.

DAVID J. O'GRADY, CSR 3146

MR. WILSON: That's Joe asserts in his--
THE COURT: I think is a triable issue of fact as to What relation Began had in this case to the Plaintiff and to The--to the Workmans' Comp case. And that isn't clear From the--from the pleadings.
So moving along to the Statute of Limitations Problem, it looks to me like the statute has run because On--starting with the 14th of January--
MR. WILSON: uh-huh.
THE COURT:--you got information that this report Had been divulged.
MR. WILSON: Your Honor, on January 14th, 1992, I had A discussion with my supervisor. He recommended that I go For counseling and he referred to a new doctor. He never Specified any quote unquote new doctor.
THE COURT: Well, you only had one new doctor, sir. There is no evidence that you had any other doctor except Began.
MR. WILSON: Actually I had gone--I had discussed With my referring physician Doctor Foraste's office about Going to see Doctor Dennis Phelps.
THE COURT: There's nothing in here about that. According to the statement of facts you went and saw Began And told him not to say anything. Began then says something When he has--when he gets a request from the Navy, and on January 14th, 1992, you knew that because your own Supervisor said something about it.
MR. WILSON: No, he didn't. My supervisor did not

OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
JOSEPH A. LANE, CLERK

DIVISION: 6 DATE:12/14/95

Robert C. Wilson
P.O.Box 9
Summerland, CA 93067

RE: Wilson, Robert
VS.
Began, Michael D

2 Civil B087557
Ventura No. 136084

THE COURT:

REQUEST TO TAKE ADDITIONAL EVIDENCE DENIED

OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
JOSEPH A. LANE, CLERK

DIVISION: 6 DATE: 01/08/96

Robert C. Wilson
P.O.Box 9
Summerland, CA 93067

RE: Wilson, Robert
VS.
Began, Michael D

2 Civil B087557
Ventura No. 136084

THE COURT:

REQUEST TO TAKE ADDITIONAL EVIDENCE DENIED

SUPERIOR COURT OF THE

STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF VENTURA

ROBERT WILSON, JR.	) No. CIV 136084
	)
Plaintiff,	)
	)
vs.	)
	)
MICHAEL D.BEGAN, M.D.,	)
OCEAN ORTHOPEDIC	)
SURGERY AND SPORTS	)
MEDICAL GROUP and Does	)
1 through 20, Inclusive,	)
Defendants,	)

Deposition of MICHAEL D. BEGAN, M.D., taken on behalf of the Plaintiff, at 260 Maple Court, Suite 231, Ventura, California, commencing at 11:50 a.m., Thursday, July 7, 1994, before Kathleen L. Tillquist, Certified Shorthand Reporter No.9859.

Appearances of Counsel:

For the Plaintiff:
Robert Wilson, in Propria Persona
P.O. Box 9
Summerland, CA 93067

For the Defendant:
Patterson, Ritner, Lockwood, Zanghi, & Gartner
By: Samuel M. Huestis
260 Maple Court Suite 231
Ventura, California 93003

From Pages 12, 13 of Deposition

Q And what was your conclusion that you, as You stated, related to me during our discussion?
A Well, that you use your hands in a more Natural manner; that you avoid things which may Exacerbate your symptoms; and that I did not recommend Any injections of cortizone; that I did not recommend Surgery at that time; that I really did not feel That there was much that I could do for you . I Mentioned the possibility of seeing a psychiatrist Because I felt that you were overreacting to your Symptoms.
Q You told all of this to me during the Office visit with you?
A To the best of my recollection, I did.

From Page 13 of Deposition

Q Did you ever receive any notice to from the Department of Labor requesting any report of your December 30th, 1991, examination of my injury?
A I personally have never seen anything From the Department of Labor regarding you.
Q Do you know if your staff--or did Anyone on your staff provide you with anything from the U.S. Department of Labor requesting a report of your December 30th, 1991, examination of my injury?
A I have never seen anything requesting a Report from the U.S. Department of Labor from anyone From my staff or from the Department of Labor.
Q Why did you dictate a special examination Report of my office visit with you if you knew officially that I was a private insurance carrier and My private insurance didn't require a report as a General rule?

MR. HUESTIS: Objection; it's argumentative.
But you can answer, Doctor.
THE WITNESS: I was told that this was changed
From a private insurance matter to a Workmen's Comp
Matter, and I dictated it appropriately.

Page 21 of Deposition, for which Request to Take as Additional Evidence was denied by Appellate Court.

Q Have you ever seen patients prior to me
For Workers' Compensation claims?
A I think that's just what you asked
Before. Yes, I have.
Q Okay. Do you know if these people, after
They saw you, if their Workers' Compensation claim was
Approved or disapproved?
MR. HUESTIS: Objection; that requires him to
Recall every single patient.
MR. WILSON: I'm not asking him to recall every
Single patient.
MR. HUESTIS: You asked him about--
BY MR. WILSON:
Q Were any of them approved or were any of
Them disapproved?
A I have seen patients who--the majority
of the patients that I see under Workmen's Compensation
Claims have prior approval before they reach the
office . Occasionally, a patient is seen claiming a
Workmen's Compensation injury, and we go through an
Approval process following the visit. Occasionally,
That is denied, and we seek payment from the patient.

Page 22 of Deposition, for which Request to Take as Additional Evidence was denied by Appellate Court.

Q When you received information about my

Claim being a Workers' Comp and you wrote up the Report, was your understanding that my Workers' Comp Claim had prior approval?
A I had no understanding about that one way Or the other.

Page 82 of deposition

STATE OF CALIFORNIA)
) ss.
COUNTY OF VENTURA)

I, MICHEAL D. BEGAN, M.D., declare under the penalty of perjury that I have read and reviewed the transcript of my testimony taken by deposition on July 7, 1994, in the city of Ventura, California, and the attached transcript is a true and accurate transcript to the best of my knowledge and belief.

Executed on this 3rd day of Aug, 1994.

S/Micheal D. Began, M.D.

SUPERIOR COURT OF THE

STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF VENTURA

ROBERT WILSON, JR.	) No. CIV 136084
Plaintiff,	)
vs.	)
MICHAEL D.BEGAN, M.D., OCEAN ORTHOPEDIC SURGERY AND SPORTS MEDICAL GROUP and Does 1 through 20, Inclusive, Defendants,	)

Deposition of AMPARO LEON, taken on behalf of the Plaintiff, at 260 Maple Court, Suite 231, Ventura, California, commencing at 3:15 p..m., Wednesday, June 29, 1994, before Joe M. Rivas, Certified Shorthand Reporter No.10347.

Appearances of Counsel:

For the Plaintiff:
Robert Wilson, in Propria Persona
P.O. Box 9
Summerland, CA 93067

For the Defendant:
Patterson, Ritner, Lockwood, Zanghi, & Gartner
By: Samuel M. Huestis
260 Maple Court Suite 231
Ventura, California 93003

From Pages 12, 13, 14, 22, and 23 of Deposition, for which Appellant's Request to Take as Additional Evidence was Denied.

(Pages 12,13)

Q So at that time in January, February when you obtained this information from Mary, you were still Treating me as a cash patient; is that correct?

A I was not treating you as anything at that Time.

Q I'm sorry?

A I was not treating you as anything at that Time. We don't do our billing right away.

(Pages 14)

Q Well, who was my insurance carrier? Who was it That clarified who my insurance carrier was?

A Well, I do believe, if I'm not mistaken, you yourself called. And you said that you were going to take Care of the bill, so we never billed anyone for you..

(Pages 22,23)

A We don't deal with patients that have Discrepancies right away, so those can wait for a while. We deal with the ones that we have all the information on Right away.

Q Okay. Is it -- you don't deal with that right Away. What do you mean?

A What do I mean? It means that if there's a Discrepancy or two names of insurances, well, we'll just Wait till we get the right information. It usually comes.

Q And when did that right information come?

A Well, actually, it did not, because I do Believe that you called, I would say in February. And you Didn't want us to bill anyone.

STATE OF CALIFORNIA)
) ss.
COUNTY OF VENTURA)

I, AMPARO LEON, declare under the penalty of perjury that I have read and reviewed the transcript of my testimony taken by deposition on June 29, 1994, in the city of Ventura, California, and the attached transcript is a true and accurate transcript to the best of my knowledge and belief.

Executed on this 3rd day of Aug, 1994.

S/Amparo Leon.

Law Offices
Patterson, Ritner, Lockwood, Zanghi, & Gartner
Ventura Office
260 Maple Court Suite 231
Ventura, CA 93003-3594
Phone (805)644-1061
Fax (805)656-1547

July 25, 1994

Mr. Robert Wilson, Jr.
Post Office Box 9
Summerland, CA 93067

RE: Wilson v Began, M.D. et al.
Ventura Superior Court Case No. CIV 136084

Dear Mr. Wilson:

We have located and are enclosing a copy of the insurance billing form that Amparo Leon spoke about at her deposition.

Very truly yours,

Patterson, Ritner, Lockwood,
Zanghi & Gartner
S/Samuel Huestis
By Samuel Huestis

Employment Standards Administration
P.O. Box 193769 San Francisco CA 94119

0 Medicare O Medicaid O Champus O Champva O FECA O Other

PATIENT AND INSURED (SUBSCRIBER) INFORMATION

1. Patient's Name (Last, First, M.I.) 2. Patient's DOB 3. Insurred's Name (last,first,mi)
Wilson, Robert C 10/01/58 Wilson, Robert C

4. Patient's Address (St,City,St,Zip) 5. Patient's Sex 6. Insured's I.D. No.
PO Box 9 Male O Female O A13-964344
Summerland, CA 93067

7. Pt relationship to Ins. 8. Insured's Group No./Name
Telephone No. Self Spouse Child Other Naval Air Warfare C
969-7165 ⊠ O O O

9. Other Health Insurance Coverage 10. Was Condition Related To: 11. Insured's Address (St,City, St,Zip)
None A. Patient's Employment
Yes O No ⊠ Telephone No.
B. Accident
Auto O Other O 11a Champus Sponsors
Status O Act Duty O Retired O Deceased
Branch of Service

12. Patient's or Authorized Person's Signature (Read back before Signing)
I Authorize the release of any medical Information necessary to process this claim. I also request payment of Government benefits Either to myself or to the party who accepts Assignment below
Pt's Req for Pmt on File
Signed Date

13. I Authorize Payment of Medical Benefits to Undersigned Physician or supplier for service described Below
Pt's Req for Pmt on File
Signed
(Insured or Authorized Person)

PHYSICIAN OR SUPPLIER INFORMATION

14. Date of Illness(First Symptom) or Injury (Accident) or Pregnancy (Lmp): 08/23/91

15. Date first consulted You for this condition: 12/30/91

16 If Patient has had Same or similar Injury, give dates

17. Date Patient able Return to Work

18. Dates of Total Disability From Through

Dates of Partial Disability From Through

19. Name of Referring Physician or other Source (e.g. Public Health Agency): Desiree D Foraste MD A89985

20. For Services Related to hospitalization Give hospitalization dates Admitted Discharged

21. Name and address of Facility where Services rendered (If other than home or office)

22. Was Laboratory work performed outside Your office? Yes O no Q Charges:

23 A. Diagnosis or nature of illness or injury, relate diagnosis To procedure in column D by reference 1,2,3 or dx code

1. 354.0 Carpal Tunnel Syndrome
2.
3.
4.

B. Epsot O yes O no
Fam Pln O yes O no
Prior Authorization No.

24 A. Date Of Service From To	B. Place Of Service	C. Fully describe procedures Medical services or Supplies furnished for Each date given Procedure Code Explain	D. Diagnosis Code	E. Charge	F. Day s Or Units	G. TOS	H. Leave Blank
12/30/91	03	90015 Office/Int Exam Intermediate	1	90.00	1	0	

25. Signature of physician Or supplier (including Degree(s) or Credentials) (I certify That stsatements on The reverse apply to This bill and are made A part thereof

26. Accept assignment (Government claims Only) (see back) Q yes O no

27. Total Charge 90.00

28. Amount Paid 0.00

29. Balance Due 90.00

30. Your social security no. s/ Micheal D. Began M.D. 554702043

Date 01/07/92

31. Physician's supplier's and/or Group name,address,zip code And telephone no.
(805) 525-0031
Micheal D Began MD
115 Dean Dr
Santa Paula,Ca 93060

32. Your patient's Account No. 023248 clm#12874

33. Your employer ID No 77-0254683

MBG60390 00G603900

Form HCFA-1500 Form OWCP-1500 Form Champus- 501 Form RRB-1500

OCEAN ORTHOPEDIC SURGERY AND SPORTS MEDICAL GROUP

Thomas F. Golden, M.D.
Michael D. Began, M.D.

2929 Loma Vista #F
Ventura, CA 93003
(805) 648-3902

115B Dean Drive
Santa Paula, CA 93060
(805) 525-0031

SPECIAL EXAMINATION REPORT

December 30, 1991

Dept. Of Labor Office
of Workers Compensation
P.O.Box 193769
San Francisco, CA 94119

REGARDING: Robert Wilson
EMPLOYER: Naval Air Warfare Center Point Mugu
D/I: 8/23/91
CLAIM #: A13-964344

ATTENTION: **Mary Wedel**
Adjuster

Gentlemen:

Robert Wilson is a 33-year old Caucasian male who was seen in my office on December 30, 1991 at the request of Dr. Foraste for an orthopedic consultation for an industrial injury sustained on August 23, 1991.

CHIEF COMPLAINT: Bilateral wrist pain

HISTORY OF PRESENT ILLNESS: The patient states that on

August 23, 1991 while working at his regular capacity as a mechanical engineer with the Pacific Missile Test Center in Point Mugu, he was working on a computer when he had an acute onset of bilateral wrist pain. The pain was described as a sharp discomfort which gradually increased over time. The patient states that he reported the injury to his supervisor, however he was able to continue to work. The patient was seen by Dr. Foraste who evaluated the patient and referred him for electrodiagnostic tests in October 1991. The patient was tried on several medications including Voltaren and Prednisone which the patient states has not helped. Currently the patient complains of bilateral wrist pain, the left worst than the right. He also complains of a vague bugging or tingling sensation in various locations throughout his hands. These sensations tend to move around and at various times have been located on the radial and ulnar aspects of the palm, occasionally dorsally and occasionally over the volar aspect of the wrist. The patient denies night pain. He denies numbness. He has been prescribed cockup splints which he does not wear as he feels they irritate the hands. The patient has been seen by physical therapy where ultrasound and ice packs have been tried with no apparent relief of his symptoms. The patient states that he has found that the symptoms are relieved by holding his wrist in a neutral position with the fingers extended and together. The patient describes this as the position of an "atomiton" and states he tries to keep this position at all times. The patient has brought in several articles regarding carpal tunnel syndrome, its diagnosis and treatment.

EXAMINATION: The patient appears comfortable. The patient holds his wrists in a stiff neutral position. He holds the fingers fully extended and abducted in a paddle-like position. When asked to perform certain tasks, the patient tries to perform the tasks with the hands remaining in this stiff position. When convinced to relax his position, range of motion of the wrists and fingers are full. There is a questionable Tinel's sign on the left and a negative on the right over the median nerve. There is a negative Phalen's test bilaterally. Sensory exam in the distribution of the median and ulnar nerves to

the hand is grossly normal. Electrodiagnostic studies, nerve conduction studies of both upper extremities performed on October 28, 1991 show mild slowing of the left median nerve at the carpal tunnel and normal nerve conduction of the right median nerve at the carpal tunnel. Nerve conduction of the ulnar nerves is normal bilaterally.

ASSESSMENT: Mild left carpal tunnel syndrome

DISCUSSION: The patient does have a mild degree of organic pathology as evidenced by his nerve conduction studies. I believe the patient has overreacted to his symptoms as evidenced by his rigidly held hand and wrist posture. I do not feel that the patient is a good surgical candidate and would be very concerned about the possibility of developing a reflex sympathetic dystrophy following any surgical procedure. I also do not recommend carpal tunnel injections as these may also bring on increased symptoms. I advised the patient to avoid holding his wrists in this rigid position and to use the hands as normally as possible. The patient may benefit from wearing cockup splints when his symptoms are exacerbated. He may also benefit from a trial of different anti-inflammatory medications. The patient should avoid repetitive stressful activities with both upper extremities. Typing or use of a computer terminal may exacerbate his symptoms. **I do not feel that there is anything I can do for him orthopedically. The patient may benefit from psychiatric consultation.** The patient and I discussed his problem in great length. He will return to me on a prn basis.

Sincerely,

s/Michael D. Began, M.D.

MDB/dm
cc: **Desiree Foraste, M.D.**

ROBERT WILSON, JR.) Case No. CIV 136084
)
Plaintiff,)
)
vs.)
)
MICHAEL D.BEGAN, M.D.,)
OCEAN ORTHOPEDIC)
SURGERY AND SPORTS)
MEDICAL GROUP and Does)
1 through 20, Inclusive,)
Defendants,)

DEPOSITION OF ROBERT C. WILSON, JR.

Friday, April 22, 1994
260 Maple Court\
Ventura, California

REPORTED BY
EVELYN AGUSTIN-MABALOT
CSR NO. 4304

Appearances of Counsel:

For the Plaintiff
ROBERT C. WILSON, JR.
P.O. Box 9
Summerland, CA 93067
(IN PROPRIA PERSONA)
For the Defendants:
Patterson, Ritner, Lockwood, Zanghi, & Gartner
By: Samuel M. Huestis
260 Maple Court Suite 231
Ventura, California 93003
(805) 644-1061

(Page 71)

Q You received Mary Wedel's file at some point in Time, is that right?

A Workers' Comp file, yes, I did.

Q Did you see a copy of Dr. Began's Report in that File?

A No.

(Pages 73,74)

Q Now, did you ever inspect your file at the Department of Labor as opposed to Ms. Wedel's file?

A Yes, I obtained a copy of my Workers' Compensation Claim file from the U.S. Department of Labor on or about April, May, 1992

Q And did you find a copy of this best piece of Evidence in that file?

A No. All I saw regarding that file or in that file Up there in the U.S. Department of Labor was a conversation record between Joe Alig and Tim Dahlstrom. Tim Dahlstrom or Joe Alig mentioned to the U.S. Department of Labor that I had gone to see Dr. Began. And that the U.S. Department of Labor responded back that Began not Authorized -- we authorized Phelps for consult, not Began.

(Page 173)

I declare under the penalty of perjury, that the foregoing testimony is true and correct.

Signed and dated this 31 day of May, 1994, at Summerland, California.

S/Robert C. Wilson, Jr.

Law Offices
Patterson, Ritner, Lockwood, Zanghi & Gartner
260 Maple Court, Suite 231
Ventura, California 93003-3594
(805)644-1061 Fax (805) 656-1547

Samuel M. Huestis, Esq. (Bar No. 113557)
Attorneys for Defendants
Micheal D. Began, M.D. and Ocean Orthopedic Surgery and
Sports Medical Group

IN THE SUPERIOR COURT OF THE

STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF VENTURA

ROBERT WILSON, JR.	) **Case #CIV 136084**
	)
Plaintiff,	) **DECLARATION OF**
	) **MARY M. WEDEL**
	)
vs.	)
	)
MICHAEL D.BEGAN, M.D.,	)
OCEAN ORTHOPEDIC	)
SURGERY AND SPORTS	)
MEDICAL GROUP and Does	)
1 through 20, Inclusive,	)
Defendants.	)

I, Mary M. Wedel declare:

1. I am employed by the Department of the Navy, Naval Air Wartare Center, Weapons Division, at Pt.Mugu, California, as an Injury Compensation Program Administrator.

BEST AVAILABLE

2. I am making this declaration at the request of counsel for defendants Micheal D. Began, M.D., and the Ocean Orthopedic Surgery and Sports Medical Group. I understand counsel intends to present this declaration to the Court in support of defendants' Motion for Summary Judgment and as evidence at the arbitration of this action.

3. I have personal knowledge of the facts stated in this declaration, and if duly subpenaed would testify competently thereto.

4. In my role as **Injury Compensation Program Administrator**, I have had responsibility in connection with the claim of Robert C. Wilson, Jr., an employee of the Navy, filed in 1991 for possible work related carpal tunnel syndrome.

5. On or about January 6, 1992, by reason of communications with Mr. Wilson and the office of Desiree Domingo Foraste,M.D. I was aware that Mr. Wilson was under her care for claimed wrist pain. On or about that date I was advised by Lisa, who represented herself to be Dr. Foraste's office manager, that Dr. Foraste had referred Mr. Wilson to Micheal D. Began, M.D. For an orthopedic evaluation. I then contacted Dr. Began's office and advised Dr. Began's staff that this was a work comp claim for a possible work-related injury and provided the address of the U.S. Department of Labor in San Francisco where Dr. Began was to send his billing and report.

6. On or about January 13, 1992, I wrote to Dr. Began, requesting his opinion as to wether Mr. Wilson was able to perform the functions of his position and requesting an indication of any additional restrictions or modifications to the current restrictions set by Dr. Foraste that may have been required. Our office was subsequently advised by telephone call from Helen at Dr. Began's office that the current work restrictions were okay with Dr. Began.

7.At no time did I receive a copy of any written report stating Dr. Began's evaluation of Mr. Wilson, and at no time did anyone

LE COPY

from Dr. Began's office inform me of any of Dr. Began's impressions, conclusions, or diagnosis of Mr. Wilson, except that the work restrictions set by Dr. Foraste were okay with Dr. Began.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 31, 1994.

s/ Mary M. Wedel

DEPARTMENT OF THE NAVY
Naval Air Warfare Center
Weapons Division
Point Mugu, California 93042-5001

In reply refer to:
12810
0423
13 Jan 92

Dr. Began: RE: Robert Wilson

You have been treating Robert Wilson for possible work-related carpal tunnel syndrome.

Mr. Wilson was referred to you by Dr. Desiree Domingo-Foraste. At the time of his referral, Mr. Wilson was under certain work restrictions. Enclosure (1) is a copy of these work restrictions. It is requested that you review enclosure (1) and determine if these restrictions are still valid.

Based upon the restrictions in enclosure (1), Mr. Wilson was placed in a light duty position. The duties of this light duty position require him to read technical manuals, make short notes regarding changes which may need to be done to the manual and turn these notes in to be typed. In your medical opinion, is Mr. Wilson able to perform the functions of this position as described.

If any additional restrictions should be required or any modifications to the current restrictions are necessary, please so indicate.

If you have any questions, please contact me at (805) 989-3304.

Sincerely,

s/Mary M. Wedel, Injury Compensation Program Administrator

Robert C. Wilson
P.O.Box 9
Summerland, CA 93067
(805) 969-7165
Plaintiff in Pro Per

IN THE SUPERIOR COURT OF THE

STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF VENTURA

ROBERT WILSON, JR.	) Case #CIV 136084
	)
Plaintiff,	) **DECLARATION OF**
	) **JOE S. ALIG**
vs.	)
	)
MICHAEL D.BEGAN, M.D.,	)
OCEAN ORTHOPEDIC	)
SURGERY AND SPORTS	)
MEDICAL GROUP and Does	)
1 through 20, Inclusive,	)
Defendants,	)

I, Joe S. Alig declare:

1. I was previously employed by the Department of the Navy, Naval Air Warfare Center, Weapons Division, at Pt.Mugu, California, as a claims adviser until November 15, 1992, when I retired from United States Federal Government service.

2. I am making this declaration at the request of Plaintiff, Robert C. Wilson, Jr. I understand Plaintiff intends to present this declaration to the Court in opposition to defendants' Motion for Summary Judgment.

3. I have personal knowledge of the facts stated in this declaration, and if called upon would testify competently thereto.

4. In my previous role as claims adviser, I have had responsibility in connection with the claim of Robert C. Wilson, Jr., an employee of the Navy, filed in 1991 for possible work related carpal tunnel syndrome.

5. On or about January 16, 1992, Dr. Began's office informed me that the work restrictions set by Dr. Foraste were okay with Dr. Began.

6. On or about January 16, 1992, Dr. Began's office informed me that the work restrictions set by Dr. Foraste were okay with Dr. Began.

7. On or about January 21, 1992, I contacted the U.S.Department Of Labor (OWCP) to discuss Mr. Wilson's claim. I informed the U.S.Department Of Labor (OWCP) that Mr. Wilson had gone to see Dr. Began. Tim Dahlstrom, claims reviewer for U.S.Department Of Labor (OWCP) informed me that they authorized Mr. Wilson to see Dr. Phelps **not Dr. Began.**

8. On or about February 27, 1992, **Tim Dahlstrom, U.S.Department Of Labor (OWCP) advised me that he was preparing a letter to reject Mr. Wilson's claim of carpal tunnel syndrome. Tim further stated the medical evidence was not sufficient to support Wilson's claim of carpal tunnel syndrome, and the medical evidence stated Wilson's problem may be psychological.**

I declare under the penalty of perjury, that the foregoing is true and correct

Date: June 23, 1994 S/ Joe S. Alig

U.S. Department of Labor
Employment Standards Administration
Office of Workers' Compensation Programs
71 Stevenson Place, P.O. Box 3769
San Francisco, CA 94119-3769
(415) 744-6610

March 4, 1992

File Number 13964344

Robert C. Wilson
P.O. Box 9
Summerland, CA 93067

Dear Mr. Wilson:

We have accepted your claim that you sustained an injury while in the performance of your duty as a Federal employee. The specific accepted condition accepted is: Bilateral Carpal Tunnel Syndrome.

You may be entitled to compensation for periods of injury-related disability. If you have entered a leave-without-pay status or expect to soon enter a leave-without-pay status, you should immediately file a Form CA-7, Claim for Compensation on Account of Traumatic Injury or Occupational Disease. Part A of the form should be completed by you in full and submitted to your employer for completion of Part B and submitted to this Office. You may claim the period your doctor estimates that you will be disabled from work or until your next medical appointment, but not more than 30 days of wage loss.

If you have used sick or annual leave on account of your injury, you may submit a request to buy back such leave on Form CA-7.

Any claim for compensation must be supported by medical evidence of injury-related disability for the period you are claiming. Form CA-20, Attending Physician's Reports, is attached to Form CA-7 for this purpose. It is your responsibility to arrange for the submission of supporting medical evidence.

You are authorized to undergo corticosteroid injection as indicated by Dr. Phelps. Please consult Dr. Phelps as your treating physician. He is a specialist for conditions such as yours, and he has provided a thorough report.

Sincerely,

S/Tim Dahlstrom
Claims Examiner

cc: **Dept. Of the Navy**
PAC Missile Test Center
Human Resources Office Code 0423
Point Mugu, CA 93042

DECLARATION OF ROBERT C. WILSON, JR.

I, Robert C. Wilson, Jr., declare:

1. I am the Plaintiff in Pro Per in the Ventura County Superior Court Case No. CIV136084, entitled Wilson v Began, et al.

2. I am writing this declaration in support of motion to continue the hearing for summary judgment or, in the alternative summary adjudication and trial set for August 29, 1994.

3. On February 8, 1994, I obtained a general information sheet paper from my workers' compensation claim file at my place of employment. When I obtained this general information sheet paper my employer requested that I put in writing when I obtained this general information sheet paper prior to February 8, 1994. On this general information sheet paper I saw a transcription, dated February 27, 1992, of a phone conversation between Joe S. Alig and Tim Dahlstrom. The conversation I saw was Tim Dahlstrom, U.S. Department of Labor (OWCP) advised that he was preparing a letter to reject Wilson's claim. Medical Evidence not sufficient to support claim (CTS). Wilson's problem may be psychological. Tim tended to agree. We should receive letter in a week. I did not know this conversation had taken place until February 8, 1994. My employer requested I provide them a signed document dated February 8, 1994, stating I received the general information sheet paper dated February 27, 1992.

4. On March 4, 1992, the U.S. Department of Labor wrote a letter to me stating that my workers' compensation claim had been approved.

5. At the time I obtained the general information sheet I asked my employer "who transcribed this information." They did not confirm the identity of the transcriber. I later wrote a letter to my employer with a request to provide me with the transcriber's name. My

employer declined.

6. I have reviewed all the documentation that was sent to the U.S. Department of Labor for my workers' compensation claim prior to February 27, 1992. Neither I, my employer or any of the health care providers (except for defendant, Dr. Began) made a statement that I may benefit from a psychiatric consultation. On April 22, 1994, Attorney Huestis informed me during my deposition that Dr. Began's report was a "best piece of evidence: if my employer or anyone wanted to deny my workers' compensation claim.

7. I was informed by Dr. Foraste's office manager Lisa, that they did not provide Dr. Began's report to anyone except me.

8. I did not send Dr. Began's report to anyone prior to initiating my complaint against defendants.

9. Amparo Leon informed me during her deposition of June 29, 1994, that Mary Wedel identified herself to Dr. Began's office as an adjuster with the U.S. Department of Labor.

10. I have reviewed the declaration that Mary Wedel wrote in support of defendants motion for summary judgment or, in the alternative summary adjudication. There is no statement as to how she identified herself to Dr. Began's office.

11. Attorney Huestis informed me that he was unavailable for deposition of Mary Wedel during week of July 25th through July 29th, 1994, and that he would not provide an alternate attorney during the week of July 25th through July 29th, 1994, for Mary Wedel's deposition.

12. Scott Miller informed me that Mary Wedel was unavailable during week of July 25th through July 29th, 1994, and that he would not allow deposition of Mary Wedel after regular work hours. Scott Miller also requested that I complete a three page questionnaire prior

to releasing Mary Wedel for deposition. The current release has a two hour maximum time for deposition. I can and will, provide this to the court at the time of hearing.

13. After a two week delay caused by defendants counsel, I obtained from Attorney Huestis's office on July 25, 1994, a copy of the medical billing document pertaining to my office visit with Dr. Began. The medical billing document is addressed to the U.S. Department Of Labor. This is the same medical billing document that the Honorable Judge John Hunter granted my request to obtain from defendants. I can and will provide documentation to the Court on this matter.

14. I asked Attorney Huestis to agree to a continuance for hearing date for motion for summary judgment or, in the alternative summary adjudication, and trial set for August 29, 1994. Attorney Huestis declined.

15. I have previously filed a ex parte application for continuance in this matter set for trial. For this and previous continuance, it was the actions (cumulative of at least two months) of the defendants that delayed my discovery.

I declare under the penalty of perjury under the laws of the State of California, the foregoing is true and correct.

DATED: July 29, 1994

s/ Robert C. Wilson, Jr.
Declarant

From Page 47 of Micheal D. Began Deposition

Q Does your board certification as an Orthopedic surgeon--does your board certification as An orthopedic surgeon qualify you to make psychological Assessments?

A My training as a physician and surgeon Does, yes.

From page 58 of Micheal D. Began Deposition

Q Did your office- did you or anyone on your office staff follow through with your intention to Send the December 30th, 1991, report to the U.S. Department of Labor?

A No.

07/08/96 12:30 847 823 8026 AAOS
COMMUNICATION

American Academy of Orthopedic Surgeons
6300 N. River Rd., Rosemont, Il 60018
AAOS Fax on Demand System #1-800-999-2939

To: Robert Wilson
From: Joanne Swanson

A. Career In Orthopedics

Orthopedics is a medical specialty concerned with the diagnosis, care and treatment of patients with musculoskeletal disorders. The physicians who specialize in treating injuries and diseases of the musculoskeletal system are called orthopedic surgeons or orthopedists.

Although orthopedists may perform surgery to restore function lost as a result of injury or disease of bones, joints, muscles, tendons, ligaments, nerves, or skin, they are involved in all aspects of health care pertaining to the musculoskeletal system. They employ medical, physical, and rehabilitative methods as well as surgical methods. Typically, as much as 50 percent of the orthopedist's practice is devoted to non-surgical or medical management of injuries or disease and 50 percent to surgical management.

The orthopedist also works closely with other health care professionals and often serves as a consultant to other physicians. Orthopedists, in particular, play an important role in the organization and delivery of emergency care and work as a team player in the management of complex multi-system trauma.

The Scope of Orthopedics

Orthopedics is a specialty of immense breadth and variety. Orthopedists treat a wide variety of diseases and conditions, including such common injuries as fractures, torn ligaments, dislocations, sprains, tendon injuries, pulled muscles, and ruptured

discs. They also treat conditions such as low back pain, sciatica, scoliosis, knock knees or bow legs, bunions and hammer toes. More recently great advances have occurred in the surgical management of degenerative joint disease with the replacement of the diseased joint by a prosthetic devise (total joint replacement). Similarly, the application of visualizing instruments to assist in the diagnosis and surgical treatment of internal joint diseases (arthroscopy) has opened new horizons of therapy.

The Greek roots of orthopedics are "ortho" (straight) and "pais" (child), and much of the early work in orthopedics involved treating children who had spine or limb deformities. Orthopedists continue to treat children with bone tumors and neuromuscular problems such as muscular dystrophy and cerebral palsy, as well as to correct birth abnormalities such as club foot, hip dislocation and abnormalities such as unequal leg length. Orthopedists also treat diseases prevalent in the elderly, such as osteoporosis, as well as arthritis and bursitis.

Some orthopedists confine their practice to specific areas of the musculoskeletal system, such as the spine, hip, foot, or hand. However, 41 percent of orthopedic surgeons designate themselves as "general orthopedic surgeons," 36 percent consider themselves as "general orthopedic surgeons with specialty interest," while 23 percent consider themselves as "specialists within orthopedic surgery." Many generalists may have a special interest in a specific area, but still treat most injuries or diseases of the musculoskeletal system.

American Academy of Orthopedic Surgeons
6300 N. River Rd.
Rosemont, IL 60018
(708) 823-7186

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AMERICAN PSYCHIATRIC ASSOCIATION

LIBRARY AND ARCHIVES

AMERICAN PSYCHIATRIC ASSOCIATION
1844

To: Robert Wilson

John Auditore, MA, MSLS
Assistant Librarian

Prepared by the Joint Commission of Public Affairs, American Psychiatric Association, September 1985. Revised August 1992.

What is a Psychiatrist

Thanks to progress in research, today's psychiatrist can do more than ever before to help people suffering from mental illnesses. And there is much to do. In any six month period, one in five persons will suffer a diagnosable mental disorder ranging from mild depression to crippling schizophrenia. Meanwhile, work in the nation's laboratories continues to shed light on the causes and nature of mental illnesses, including the relationship of some disorders to chemical functions in the brain and to other medical illnesses. With this new knowledge, scientists are developing new diagnostic methods and treatments.

What is a psychiatrist?

A psychiatrist is a physician who specializes in the diagnosis, treatment and prevention of mental illnesses and emotional problems. Because of extensive medical training, the psychiatrist understands the body's functions and the complex relationship between emotional illness and other medical illnesses. The psychiatrist is thus the mental health professional best qualified to distinguish between physical and psychological causes of both mental and physical distress.

Definition of a Psychiatrist

Reported out of Executive Session that the Board voted to approve the following definition of a psychiatrist:

"A Psychiatrist is a physician educated and trained to provide direct services and leadership and to assume responsibility for the diagnosis, treatment, and management of those who present disorders of behavior, thought, feeling or action.

"He or she is specifically trained in the simultaneous relevance of biological, psychological and social factors. Pssychiatrists recognize that there are multiple etiological pathways to the development of symptoms. Referral for treatment and management occurs when appropriate." [Paul Fink, M.D.]

101 00 '00 00:00 058 P01

American Academy of Neurology
2221 University Ave. SF.
Suite 335
Minneapolis, MN 55414
Phone: 612 623 8115
Fax: 612 623 3504

AAN facsimile transmittal

To: Robert Wilson

From: Julie Emmett

Date: July 8, 1996

Notes: I hope this helps. Call me if you need more information at 612 623 2420.

What is a neurologist?
A neurologist is a medical doctor who has additional training in disorders affecting the nervous system.

What problems do neurologists treat?
Disorders of the nervous system-the brain, spinal cord and **nerves-muscle disorders**, and pain, especially headache, are treated by neurologists. Illness, injury or disease, including diabetes, hypertension and cancers, may affect the nervous system. Other neurological disorders are epilepsy, neuritis,brain and spinal cord tumors, multiple sclerosis, Parkinson's disease and stroke. Neurologists also treat myasthenia gravis and muscular dystrophy.

What does "neurological consultation" mean?
If your family doctor believes that your symptoms involve the **nervous system**, he or she may request a more specialized opinion.or, you may ask for a specialist's second opinion. A neurological consultation includes a review of your medical history, with special attention to your present problem. The examination includes tests of vision, strength, coordination, reflexes and sensation. These help the neurologist determine where your problem lies in the nervous system. Further tests may be required to confirm diagnoses or determine specific treatment.

Case # B087557

COURT OF APPEAL
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION 6

Robert C. Wilson Plaintiff and Appellant, vs. Michael D. Began, Ocean Orthopedic Defendants and Respondents.	)	**Civil No. B087557** **(Ventura Superior Court No. 136084)**

PETITION FOR REHEARING

ROBERT C. WILSON
P.O. Box 9
Summerland, CA 93067

INTRODUCTION

Appellant, Robert C. Wilson, seeks rehearing from the Appellate Courts decision which upholds the Trial Courts granting the defendants Motion for Summary Judgment.

The basis for this appeal is that the Court's opinion misstated and omitted material facts. *In re Jessup* (1889) C408. In addition, the Court's opinion fails to address the issues raised in Appellant's complaint (which stated defendant provided information to Appellant's employer) and reply brief (which was provided to rebut the points made in Respondent's brief).

By failing to address the issues raised in Appellant's reply brief and complaint, the Court instead focused primarily on the limited facts regarding the statute of limitations. The Court has not provided an appropriate rationale for its decision.

DISCUSSION

The Appellate Court determined Appellant's action was barred because of the Statute of Limitations. In particular they cited *Jolly v Lilly* which states, once the plaintiff has a suspicion of wrong doing, and therefore an incentive to sue, she must decide whether to file suit or sit on her rights. Part of their reason for stating this is that in 1978 she stated she was "interested in obtaining more information" about the drug because she "wanted to make a claim". She also learned of no new facts between 1978 and 1980, when the Sindall case was decided and she filed suit in 1981, almost a year after Sindall.

As will be shown in the subsequent discussion on "reasonable diligence", appellant did not "sit on his rights". However, for completeness sake, appellant will address each of the facts cited in the Appellate Courts decision, that "barred the action". It should be noted that Appellant further states the facts, given the responses

provided, are insufficient to put a reasonable person on notice.

"Undisputed facts" cited by Appellate Court

(1) Wilson established that by January 6, 1992 he knew a Navy claims administrator (Mary Wedel) had spoken to an employee in Doctor Began's office.
Actually the fact as stated is "On January 6, 1992, Wedel told Wilson that Wilson had been to see Dr. Began.

Anyway, the fact as stated by the Appellate Court is contradicted by Defendant's letters, which they provided to Appellant, stating that Mary Wedel, adjuster with U.S.Labor contacted defendants in January. A.A.page 342 and 343.

(2) a week later he suspected his supervisor knew Began had recommended psychological counseling.

Actually, the stated fact was that Appellant was suspicious that something was wrong when supervisor referred to "new Doctor" and, in the course of conversation, recommended counseling. As stated in A.A.page 161, this conversation was recorded. Appellant respectfully requests Appellate Court to review this tape (or the transcript) which will verify supervisor only recommended counseling. As record demonstrates, there were other "new doctors". A.A.

Finally, when Appellant obtained work comp file from U.S.Labor and saw that defendant report was NOT in the file, Appellant reasoned that supervisor recommendations for counseling originated with supervisor as record demonstrates. A.A. page 158.

(3) on February 19, 1992 Wilson obtained a copy of Dr. Began letter and saw it was addressed to U.S.Labor.

As shown, A.A. 117, report was addressed to Mary Wedel, adjuster, U.S.Labor in San Francisco.

Appellant obtained copy of work comp file at U.S.Labor, San Francisco. The report was not there. Appellant reasoned at because of the problem with the address, namely that Mary Wedel worked for the Navy at Point Mugu, CA, and not for the U.S Labor, the report must not have been received by the U.S.Labor.

Section 340.5 provides a statute of limitations for medical negligence "one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered" his injury.
In June 1992, Appellant came a copy of his work comp file from U.S.Labor in San Francisco. The defendants report was not there. Logically, if a report is addressed to U.S.Labor in San Francisco, regarding a work comp case, if the file of that particular case is obtained, and report is not there should demonsirate reasonable diligence. Defendants may argue that appellant "should have known that since report was addressed to Attention: Mary Wedel, adjuster, U.S.Labor in San Francisco, that appellant "should know" that report was sent to Mary Wedel, Injury Claims Program Administrator with U.S.Navy, Point Mugu, CA, since appellant knew this. This argument would be unmeritorious. Mary Wedel is Injury Claims Program Administrator with U.S.Navy, Point Mugu. The logical question at this point is why did defendants address report to Mary Wedel, adjuster, U.S.Labor, San Francisco, when Mary Wedel identified herself to defendants as Mary Wedel, Injury Claims Program Administrator, U.S.Navy, Point Mugu. The only logical conclusion is that defendants wanted to provide an "off the record" opinion to Mary Wedel, since she asked defendants for their opinion. A.A. 354. Defendants impeded Appellant's reasonable diligence in determining who defendants sent report to by providing misleading information on report as well as well as hindering Appellant from obtaining additional information from defendant's office. A.A. page 75, 95, and 96.

Finally, Appellant obtained is work comp claim file from work (during discovery) and the report was not there either. The only information appellant found there regarding defendants was a statement from U.S.Labor to U.S.Navy stating they were going to deny Appellant's work comp claim " insufficient medical evidence. Wilson's problem may be psychological."The problem is that even with this information, the diligence that Appellant had to undertake prior to arriving at the conclusion was a complete review of all medical information regarding all doctors previously seen by appellant.

THE ISSUES WHICH APPELLANT AND DEFENDANT RAISED THAT WERE NOT ADDRESS OR WERE NOT CORRECTLY ADDRESSED BY THE COURT THAT APPELLANT RESPECTFULLY REQUESTS RECONSIDERATION ARE AS FOLLOWS:

Appellate Court Decision, page 5, paragraph 3.

"Wilson contended that Began misrepresented or concealed the existence of his letter."

Appellant also contended that defendants intentionally provided deceptive information on the report (and subsequent correspondence) that they knew would hinder appellant from bringing action against them.

Section 340, subdivision (3), provides a one-year statute of limitations for injury "caused by wrongful act"

Appellant's action is based on defendants disclosing information to Appellant's employer, the Dept. of Navy. See complaint, pages 1

through 4 ofAppellant's Appendix.

Appellants initial belief that defendants sent report to his employer rather than U.S.Labor is because:

1. Report was sent to Attention: Mary Wedel
2. When Mary Wedel identified herself to defendants (as an Injury Claims Program Administrator with Navy) she asked the defendant Doctor "in your opinion" can he (appellant) perform the work according to restrictions.
3. Report was not found in U.S.Labor file to which it was addressed.
4. The subsequent paragraphs detail the incidents that occurred between appellant and defendants on the day he obtained the report from defendants.

As noted in Doctor Began's Report of December 30, 1991, Page 117 ofAppellant's Appendix, defendants addressed the report to Mary Wedel, Adjuster, Department of Labor office in San Francisco, CA.

What the defendants omitted in the report was that Mary Wedel disclosed to defendants that she was an Injury Compensation Program Administrator, with the Department of the Navy at Point Mugu, Appellant's employer, which was known to defendants as demonstrated on Page 354 and Page 56 lines 12 through 16 of Appellant's Appendix.

Even after defendants knew that Mary Wedel was an Injury Compensation Program Administrator with the Department of Navy, defendants still maintained that Mary Wedel was an adjuster with the Department of Labor up until September 3, 1992, (Pages 342 and 343 ofAppellant's Appendix), 1 year before appellant filed this action.

Appellant respectfully requests the court to take note that although Page 342 of Appellant's Appendix is dated February 26, 1992, this

is incorrect. Proof of this is in the deposition of Amparo Leon, in which she states that defendants did not move to the Brent Ave. Location until May 1992. Page 340, line 14 of Appellant's Appendix. When Appellant provided money to defendants to obtain his medical file on September 3, 1992, he requested defendants annotate the correct date of September 3, 1992, which they refused. Page 312, lines 17-25 ofAppellant's Appendix.

Obviously, if defendants had annotated on the report that they sent the report to Mary Wedel, Injury Compensation Program Administrator with the Department of Navy, Appellant's Employer, and that they knew this, appellant would have pursued this action earlier.

The statute of limitations regarding 340 is when defendant conceals material facts and provides misrepresentations. (See, for example, *Carruth v Fritch* (1950) 36C2d 426, *Casey v Anscutz* (1967) 252 CA2d 9, *Stafford v Shultz* (1954) 42 C2d 767). Borrowing words from *Stafford* "Defendant who by fraud or deceit conceals material facts and by misrepresentations hinders plaintiff from bringing action within statutory period, is estopped from taking advantage of his own wrong".

A material fact is "one upon which outcome of litigation depends". *Amart v Pacific Power and light Co.*, 10 Wash App 785.

Misrepresentation is material if it relates to a matter upon which plaintiff could be expected to rely in determining to engage in the conduct in question. *Barrington Press, Inc. V Morey*, CA 752 F2d 307.

Appellate Court Decision, page 6, paragraph 1.

He requested these continuances to further depose the Navy claims Administrator concerning, in part, "how she identified herself to defendants"

As noted in A.A. page 271, 272 , appellant provided declaration in support of Request for Continuance citing the fact that defendants' counsel had just recently (within a day or so previously) provided a medical billing document that, as the record demonstrates A.A.pages 22, 28 who, appellant had previously requested in 2 motions to compel (which were denied by the Court) and the trial court previously ordered defendants' counsel to provide to appellant, several weeks earlier. Appellant cited *Nazar*, stating defendants actions during discovery impeded Appellant. CCP 437c (h) provides that "if it appears from affidavits in a good faith showing of diligence by plaintiff (appellant), the trial court should grant continuance. The trial court denied appellant's continuance request.

Even though the Appellate Court also denied Appellant's Request to Take Additional Evidence (which contained the medical billing document as well as associated deposition papers), appellant respectfully requests emphasis on the additional evidence here so that, in the event of California Supreme Court review, the additional evidence can be reviewed by them since this petition mentions the additional evidence. Appellant also respectfully requests reconsideration of additional evidence because, as in *Nazar*, the additional evidence shows that defendants were not only negligent, but their actions either constituted or suggested fraud. Additional discovery is needed. In addition, appellant respectfully requests reconsideration of the Trial Court's denial of continuance request as an abuse of discretion, as well as an order reversing summary judgment by the Appellate Court.

Issues Not Addressed

Referring to Appellant's reply brief:

1. The complaint was insufficient as a matter of law, because there was a dispute as to the information that was confidentially communicated between the defendant physician, A.A., pages345,

346, and patient, A.A., page 286.

As a matter of law "affidavits filed on behalf of party making the motion for summary judgment are to be strictly construed, while those opposing the motion are to be strictly construed, and if there be conflicts the affidavits of the opposing party MUST be accepted as true. *Gale v Wood* (1952) 112 Cal App 2d 650.

Moreover, Evidence Code 992 discusses what is considered confidential communications.
The issue stated in complaint (violation of professional confidence) does not address the issue raised, which is that by law the defendant doctor did not communicate the information in report to appellant. Appellant respectfully requests , since as a matter of law Dr. did not inform appellant of information and Dr. knew this, the complaint be returned to amend for additional discovery under fraud. Further evidence of fraud is that since defendant Doctor was Board certified in orthopedic surgery, he was not qualified to render a psychological assessment, since he was not acting within the "scope of services".

What should have occurred is that since the issues were not properly addressed in the complaint, especially Appellant's issue that Doctor Began divulged information to employer that had NOT been communicated to Appellant.

As a matter of law, the action should not be dismissed. Rather, it should be treated the same as if a motion for judgment on the pleadings were granted. Plaintiff should be given leave to amend the complaint Summary judgment should be stayed pending the amendment; and the order granting summary judgment vacated upon filing of an amended complaint. *Williams v Braslow* (1986) 179 CA3d 762, 774. *Blanch v Young* (1984) 152 CA3d 1016.

2 The problem that ensued was that the Trial Court summarily Adjudicated the issue of breach of physician patient duty, in spite of appellant's stated opposition to adjudication on the basis that

defendant Doctor did not communicate information to appellant. AFTER he summarily adjudicated the issue, he then determined the pleadings were defective.

: "To avoid confusion and delay, it is important to keep in mind the two-step process-first, weighing the sufficiency of the causes of action stated, and then (if the pleadings are not defective) determining whether there are triable issues underlying those causes." *Hejmadi v Amfac, Inc.* (1988) 202 CA3d 525

Obviously, the trial court did not do this.

CONCLUSIONS

For the reasons stated and upon the authorities cited, Appellant, Robert C.Wilson, prays for either an order reversing summary judgment, or order granting additional discovery, or order granting leave to amend complaint, stay pending the amendment, and granting of summary judgment vacated upon filing of amended complaint.

Dated January 23, 1996

Respectfully submitted,

Robert C. Wilson
Appellant in Propria Persona

Case # B087557

IN THE
SUPREME COURT OF CALIFORNIA

Robert C. Wilson)
Plaintiff and Appellant,)
)
vs.)
)
Michael D. Began, Ocean Orthopedic)
Defendants and Respondents.)

After A Decision By The Court Of Appeal
Second Appellate District, Division 6
Case No. BO87557

PETITION FOR REVIEW

ISSUES PRESENTED

1. *Whether*, the independent review standard of the Appellate Courts disallows legal rights given to others under the abuse of discretion standard and deprives Plaintiffs the right to sue. If an Appellate Court can determine the method of summary judgment review with no dictum in the Supreme Court to legislate which standard of review should be applied and when.

2. *Whether* a proposed dictum for summary judgment review would provide uniformity of law regarding the review of summary judgments.

3. *Whether*, in event of conflict between Appellate and Trial courts on the major issue of review, if enactment of criteria could provide a reliable solution.

4. *Whether* Appellate Courts should consider a Trial Court's incorrect application of law regarding subject matter as an abuse of discretion.

NATURE OF THE CASE AND PROCEDURAL HISTORY

A. The Underlying Claim.

Plaintiff, Robert C. Wilson ("Appellant"), an employee with the Dept. of Navy, filed a work comp claim for carpal tunnel syndrome ("cts") in September 1991. On December 30, 1991, upon referral of his primary care physician, Appellant saw Ocean Orthopedic, Dr. Began("Defendants") for orthopedic evaluation. *Dr. Began("Defendant") told appellant he "didn't think he (appellant) had cts" and suggested he might have gotten the injury from "lifting something very heavy". *Shortly thereafter, Defendants informed Appellant there would be no report, but would not allow Appellant access to his medical file.

On February 19, 1992, after being notified by his primary care physician's office manager ("Lisa") of its existence, Appellant obtained a copy of defendant's report from Lisa. The report was addressed to *Mary Wedel, Dept of Labor. The report concluded that appellant "could benefit from a psychiatric consultation". *Appellant obtained a complete copy of his work comp claim file from the Dept. of Labor in June 1992. *Defendant's report was not there. *Appellant was required by his employer to attend counseling in late August 1992. *On Sept. 3, 1992, Appellant went to defendants' office and demanded his medical file. *After payment, appellant obtained a copy of letter from Mary Wedel, addressed to Defendant. *The letter demonstrated that Mary Wedel identified herself to Defendants as an employee of the Dept. of Navy. Upon advice of counsel, Appellant filed negligence and breach of physician/patient duty regarding confidential communications against Defendants on Sept. 3, 1993.

B. The Trial Court History

*The Trial Court denied Appellants 2 separate motions to compel

discovery,*2 continuance requests to incorporate Mary Wedel deposition testimony into his opposition papers,*as well as Appellant's request to depose Joe Alig, former Navy employee.
At the summary judgment hearing, the **Trial Court accused** Appellant of work comp fraud twice, *determined the Defendant was not the work comp doctor and that pleadings were defective,*did not give Appellant leave to amend, but granted summary judgment for Defendants.

C. **Appellate Court History**

On appeal, *Appellant requested review for abuse of discretion,*citing the Trial Courts own determination of defective complaint and pleadings. Because of many continuances being denied, *Appellant requested the Appellate Court take additional evidence to further review for abuse.
In the Appellate Court's independent review, they cited certain uncontradicted facts and stated there was no triable issue of fact. *They further denied without cause Appellant's requests to take additional evidence, and concurred with the Trial Courts ruling.

*These facts, although supported by affidavits and substantial evidence, were omitted in the Appellate Court decision.

In his petition for rehearing, Appellant cited evidence which contradicted the Appellate Courts uncontradicted facts and demonstrated a triable issue within those facts. Appellant also reasserted the defective pleadings and complaint issue, the requests to take additional evidence, as well as the issues noted above* which were not addressed or part of the Appellate Court's decision. The Appellate Court denied the rehearing request.

WHY REVIEW SHOULD BE GRANTED

ISSUE NO.1: Whether the current independent review standard of the Appellate Courts disallows legal rights given to others under the abuse of discretion standard and deprives plaintiffs the right to sue. If an Appellate Court can determine the method of summary judgment review with no dictum in the Supreme Court to legislate which standard of review should be applied and when.

Appellate Courts utilize the statement "***because an appeal from a summary judgment raises only questions of law***" to focus the scope of review as being "independent" from the Trial Courts findings. However, the independent review focus negates several important matters still within the Trial Courts discretion and, in some cases, deprives the person the right to sue for issues affected by that discretion. A review and brief discussion of all the current discretions under CCP 437c with related published opinions is provided below.

CCP 437c (b) states

"the supporting papers shall include a separate statement...the failure to comply...may **in the courts discretion** constitute a sufficient ground for denial of the motion".
"the opposing papers shall include a separate statement...failure to comply may constitute a sufficient reason **in the courts discretion**, for granting the motion".

In Gilbertson v Osman supra 185 CA3d at 315 and Security Pacific National Bank v Broadway supra 4 CA 4th at 97, both were reviewed under the abuse of discretion standard because the Appellate Court recognized that discretion afforded the Trial Court under 437c (b). In an independent review, the plaintiffs reversal request in the above cases would have been denied because the discretion is not within the parameters of independent review.

BEST AVAILA

"any opposition to the motion shall be served and filed not less than 14 days preceding...unless the court for good cause orders otherwise".

This discretion provides the Trial Court with flexibility regarding court rule 317b. For this petitioned case, which was reviewed "independantly", appellant previously requested continuances in order to incorporate deposition papers of Mary Wedel in accordance with CRC 317b. Because the continuances were denied, appellant requested the Appellate Court take the additional evidence, which was denied without cause. See exhibit (a).

CCP 437c (h) states

"If it appears from the affidavits submitted... facts essential to justify opposition may exist..but can then be presented...the court shall deny the motion..."

In *Nazar v Rodeffer* (1986) 184 CA 3d 506, Plaintiff provided an affidavit to the Trial Court stating that "facts essential to justify opposition existed but could not ... presented". Plaintiff originally sued for negligence but ... an action for fraud existed. The Trial Court denied ... The Appellate Court, reviewing under the abuse of discretion standard reversed. The point to emphasize, is that if appellate review was performed under the independent review, plaintiffs potential claim for fraud would not have been considered, because using the independent review "issues framed by the pleadings" approach the fraud issue would have been ignored because the Appellate Court would have only identified issues framed by the pleadings against negligence.

For this petitioned case, Appellant presented to Trial Court with affidavit and circumstances similar to *Nazar* and requested continuance, which was denied. On appeal, in light of 437c (h) which states, "if it appears", Appellant decided to "demonstrate" by providing document and deposition testimony through a request to

take additional evidence, which was denied. Rather than ask the Appellate Court to speculate on "if it appears", **Appellant demonstrated by the additional evidence that the Trial Court abused its discretion** by denying continuance to allow Appellant opportunity to raise issue of fraud. See exhibit B.

Heimadi v Amtac, Inc. (1988) 202 CA3d 525 states

"If the Trial Court finds the pleadings insufficient, it may grant the opposing party leave to amend, but it should not at the same time attempt to summarily adjudicate material issues that underlie that same cause of action". *Heimadi*, which was reviewed under the abuse of discretion standard, recognizes the procedural discretion, "if the Trial Court finds the pleadings are defective...it has discretion to allow (Plaintiff) leave to amend the complaint".

For this petitioned case, Appellant cited *Heimadi*, and demonstrated in his briefs and petition that the Trial Court abused it's discretion. This case would provide the Supreme Court the opportunity to decide if the procedural discretion of granting opposition leave to amend complaint if the Trial Court determines the pleadings are defective is viable and should be part of the proposed dictum.

Conclusions

Except for Appellant's case, as demonstrated in the above separate discussions of discretions under current summary judgment law, the abuse of discretion standard provides appropriate relief when the Trial Court abuses it's discretions. The point that should also be considered is, for each of the cases discussed, had they been reviewed under the independent review approach, they would not have been provided relief even though the Trial Court abused it's discretion. This case will provide the Supreme Court the opportunity to determine if the Appellate Court applied the appropriate standard of review, since in light of *Nazir*, *Heimadi*, and CRC 317b, the Trial Court abused its discretion several times.

ISSUE NO.2: *Whether* a proposed dictum would provide uniformity

of law regarding the review of summary judgments.

Although summary judgment law has changed significantly since 1973, the "independent review" approach does not consider the discretions still present in CCP 437c and conversely, the abuse of discretion standard does not reflect the changes that occurred in 1973. The only reliable way to resolve the choice the Appellate Courts are faced with is a "step" approach. This is not to be confused with the view adopting "both standards", such as *Cox v County of San Diego* (1991)233 CA 3d 300, but rather the approach discussed in *Saldana v Globe Weiss* 233 Cal App 3d at 1512 footnote ("Saldana"). *Saldana*, first considers if there were abuses of the discretions which are afforded the Trial Court under CCP437c, and then if no abuse, the "independant review" is conducted. Justice Buckley citing *Denham v Superior Court* (1960) 2 C3d 557("*Denham*") stated "sound reasons exist for the corect application of the appropriate standard of review". In other words, the independant review is not always the best review. Part of the reason Justice Buckley and others would review first for abuse of discretion is because the independant review seems to assume all evidence, allegations etc. are properly submitted. If a Trial Court abuses it's discretion, it's difficult to determine the total effect on the case.

The proposed dictum, patterned after *Saldana*, is as follows:
"The Appellate Court shall first review for abuse of discretion for the current discretions* allowed for in CCP 437c and the **procedural discretions
The burden of proof of abuse of discretion is on the Appellant. Then, if there is no abuse of discretion, the Appellate Court reviews in accordance with the independent review standard."

*(Separate statement, filing of opposition papers, "facts essential to justify opposition", etc.).
**Ex. discretion to amend complaint if pleadings are defective
ISSUE NO:3 *Whether*, in event of conflict between Appellate and

Trial Courts on the major issue in review, if enactment of a criteria could provide a viable solution.

There is no real case law regarding this issue in general. In most cases, where a Trial and Appellate court disagree, the Appellate Courts view will prevail. However, the Appellate Court should carefully scrutinize the Trial Courts determination.
The criteria would be as follows:

(1) The Appellate Court would state why their decision on an issue is preferred over the Trial Courts.

(A) state the reasons for the Trial Courts opinion
(B) state the reasons for the Appellate Courts opinion
(C) how Appellate reason "outweighs" the Trial Courts.

This case presents the issue of whether the Appellate Courts independant review that "identifies the issues framed by the pleadings" can still be conducted in light of the Trial Courts determination of defective pleadings. As noted, Appellant raised the issue of the Trial Courts assertion in his brief and petition for review. There was no response by the Appellate Court.

ISSUE NO. 4. *Whether* Appellate Courts should consider a Trial Courts incorrect application of law to subject matter as an abuse of discretion

In this case, at the summary judgment hearing the Trial Court determined there was a problem. Namely, that the Defendant was not the work comp doctor because Appellant was "seen upon the referral of his primary care physician.

According to law, whether a physician is or is not the work comp doctor is irrelevant. The issue of law and the lawsuit is if the information disclosed to the work comp carrier or employer was communicated between physician and patient. See *Britt v Superior Court* (1978) 20 Cal.3d 844 and Evidence Code 992. As noted in

Appellants briefs and petition, there was a conflict between Appellant and Defendant affidavits regarding the information that was communicated. *Gale v Woods* (1952) 112 Cal App 2d 650 states "if there is a conflict between supporting and opposing affidavits, the opposing affidavits must be accepted as true.

Important in this case is, if the Trial Court had been apprised of this issue regarding subject, the Trial Court would have determined the complaint was insufficient as a matter of law, based on Appellant's pleading and evidence in opposition to the summary adjudication and case law, and granted Appellant leave to amend complaint. This case provides the Supreme Court with the opportunity to determine if the Trial Court should be held responsible for it's incorrect application of the law as a matter of law. This issue, in general, would have wide application, because at all summary judgment hearings, there is a test of the complaint and, in addition, the pleadings define the issues in summary adjudication, just as in summary judgment. See exhibit (c).

LEGAL DISCUSSION

As a matter of uniformity of law, the Supreme Court should grant review and mandate the proposed dictum.There currently is no case in which the California Supreme Court has stated, either in holding or dictum, which standard is the appropriate one to use for review of a summary judgment. Mandating the proposed dictum on all Appellate Courts is consistent with the policies of the published cases referenced in this petition. The dictum would allow for discretions that are still part of CCP 437c to be reviewed according to abuse of discretion standard, and if no abuse, only then could the independent review truly then be 'independent" of the Trial Court.

There are compelling reasons for the proposed dictum:

(1) As noted in *Saldana* at 1515, Justice Buckley notes "our application of the standard of abuse of discretion in *Perry v Medina*,

Boehm v Superior Court, *Rubio v Swirldoff*, was incorrect". There is no more compelling reason for a dictum regarding the method of review than an admission by an Appellate Court Justice that they incorrectly applied the standard of review to several previous cases.

(2) The case presented in this appeal is another compelling reason. It should offend the Supreme Court's basic sense of fairness to think that Appellant would have his case dismissed by an Appellate Court reviewing summary judgment under one standard, and under another Appellate Court standard of review have his case sent back to the Trial Court for further proceedings in the same manner as other published opinions.

Law is common sense as modified by the legislature. Common sense dictates that law needs to be equally applied in order to serve the ends of justice.

CONCLUSION

For all the foregoing reasons, I respecfully urge that this petit. for review be granted.

Respectfully submitted,

Robert C. Wilson

Appellant in Propria Persona

Case # B087557

COURT OF APPEAL
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION 6

Robert C. Wilson Plaintiff and Appellant,	))	**Civil No. B087557** **(Ventura Superior**
	)	**Court No. 136084)**
vs.	)	
	)	
Michael D. Began, Ocean Orthopedic Defendants and Respondents.	))	

APPEAL FROM THE SUPERIOR COURT
OF VENTURA COUNTY
THE HONORABLE JOHN HUNTER, JUDGE PRESIDING
APPELLANT'S REPLY BRIEF

ROBERT C. WILSON
P.O. Box 9
Summerland, CA 93067

DISCUSSIONS

THE TRIAL COURT RULED ERRONEOUSLY AS A MATTER OF LAW ON THE ISSUES FRAMED BY THE PLEADINGS

The trial court ruled erroneously as a matter of law on 3 separate occasions. One occasion was when the court concluded the information in Doctor Began's report "would have been revealed in a Workmans compensation case because they have a right to discover it". (Page 41, lines 22, 23, and 24 of Reporter's Transcript). Employers do have a right to information on an employee when the employee "tenders the issue". *Britt v Superior Court* (1978) 20 Cal.3d 844.

However this only covers information communicated between the physician and the patient. As noted in appellant's declaration (Page 286 of Appellant's Appendix) and the deposition of Doctor Began (Pages 345, lines 20, 21, 22, 23, 24, 25 and Page 346, lines 1 and 2 of Appellant's Appendix) there were conflicts regarding the information communicated between physician and patient.. Therefore, the conclusion of the trial court that "they have a right to discover it", demonstrates he believed the affidavits of defendant as opposed to appellant.

As a matter of law "affidavits filed on behalf of party making the motion for summary judgment are to be strictly construed, while those opposing the motion are to be strictly construed, and if there be conflicts the affidavits of the opposing party MUST be accepted as true. *Gale v Wood* (1952) 112 Cal App 2d 650.

As noted in the Reporter's Transcript on pages 41, 42, 43, 44, and 45, the trial court continued further regarding the issues listed in the Separate Statement as if they were related to a Worker

Compensation case ,"tried" issues of fact, and accused Appellant of Workman Compensation fraud on 2 separate occasions.

Another occasion was when the trial court AFTER summarily adjudicating the issue of Breach of Physician/Patient Confidentiality as discussed above, the trial court concluded the pleadings were defective "I think is a triable issue of fact as to what relation Began had in this case to the plaintiff and to the--to the Workmans' Comp case. And that isn't clear from the--from the pleadings. So moving along to the Statute of Limitations".

As a matter of law, concurrent summary adjudications are improper. If the court finds the pleadings insufficient and grants leave to amend it may not at the same time summarily adjudicate whether the claim or defense being amended is meritorious: "To avoid confusion and delay, it is important to keep in mind the two-step process-first, weighing the sufficiency of the causes of action stated, and then (if the pleadings are not defective) determining whether there are triable issues underlying those causes." *Hejmadi v Amfac, Inc.* (1988) 202 CA3d 525

What should have occurred is that since the trial court did determine there was a "problem" with the complaint (Page 41, lines 10, 11, and 12 of Reporter's Transcript), namely that Doctor Began was not the Workman Comp Doctor, just a private physician (Page 41, lines 14 and 15 of Reporter's Transcript). Also, the issues were not properly addressed in the complaint, especially Appellant's issue that Doctor Began divulged information to employer and Worker Comp Carrier that had NOT been communicated to Appellant.

If the court concludes the complaint is insufficient as a matter of law, it may grant the "motion for summary judgment" without deciding whether the opposition raises a triable issue of fact. *Hansra v Superior Court (Magana)* (1992) 7 CA 4th 630, 639

As a matter of law, the action should not be dismissed. Rather, it

should be treated the same as if a motion for judgment on the pleadings were granted. Plaintiff should be given leave to amend the complaint. Summary judgment should be stayed pending the amendment; and the order granting summary judgment vacated upon filing of an amended complaint. *Williams v Braslow* (1986) 179 CA3d 762, 774. *Blanch v Young* (1984) 152 CA3d 1016.

THE TRIAL COURT DID NOT TOLL THE STATUTE OF LIMITATIONS AS A MATTER OF LAW

The 1975 amendment to the statute of limitations states "The time limitation shall be tolled for any period during which such person has failed to disclose any act, error or omission upon which such action is based and which is known or through the use of reasonable diligence should have been known to him.

Appellant's action is based on defendants disclosing information to Appellant's employer, the Dept. of Navy. See complaint, pages 1 through 4 ofAppellant's Appendix.

As noted in Doctor Began's Report of December 30, 1991, Page 117 ofAppellant's Appendix, defendants addressed the report to Mary Wedel, Adjuster, Department of Labor office in San Francisco, CA.

What the defendants omitted in the report was that Mary Wedel disclosed to defendants that she was an Injury Compensation Program Administrator, with the Department of the Navy at Point Mugu, Appellant's employer, which was known to defendants as demonstrated on Page 354 and Page 56 lines 12 through 16 ofAppellant's Appendix.

Even after defendants knew that Mary Wedel was an Injury Compensation Program Administrator with the Department of Navy, defendants still maintained that Mary Wedel was an adjuster with the Department of Labor up until September 3, 1992, (Pages 342

and 343 ofAppellant's Appendix), 1 year before appellant filed this action.

Appellant respectfully requests the court to take note that although Page 342 ofAppellant's Appendix is dated February 26, 1992, this is incorrect. Proof of this is in the deposition of Amparo Leon, in which she states that defendants did not move to the Brent Ave. Location until May 1992, Page 340, line 14 of Appellant's Appendix. When Appellant provided money to defendants to obtain his medical file on September 3, 1992, he requested defendants annotate the correct date of September 3, 1992, which they refused. Page 312, lines 17-25 ofAppellant's Appendix.

Obviously, if defendants had annotated on the report that they sent the report to Mary Wedel, Injury Compensation Program Administrator with the Department of Navy, Appellant's Employer, and that they knew this, appellant would have pursued this action earlier.

CONCLUSIONS

For the reasons stated and upon the authorities cited, Appellant, Robert C.Wilson, prays for either an order reversing summary judgment, or order granting leave to amend complaint, stay pending the amendment, and granting of summary judgment vacated upon filing of amended complaint.

Dated November 16, 1995 Respectfully submitted,

Robert C. Wilson

Appellant in Propria Persona